



# Town of Derry

*"Derry, New Hampshire's Place to Be"*

DEPARTMENT OF PUBLIC WORKS,  
Michael Fowler, P.E., Director  
Thomas A. Carrier, Deputy Director

PW15-261

October 30, 2015

Newton Tedder  
US Environmental Protection Agency  
5 Post Office Square – Suite 100  
Mail Code-OEP06-1  
Boston, MA 02109-3912

**RE: Comments – 2015 Revisions to 2013 Draft Municipal Separate Storm Sewer System General Permit**

Dear Mr. Tedder,

The Town of Derry is submitting the attached comments on the revised sections of the Draft 2013 Municipal Separate Storm Sewer System General Permit (MS4GP) for your consideration.

**2.2** - This section states that the permittee shall identify in the SWMP and Annual Reports "all discharges... that: ...are subject to an approved Total Maximum Daily Load" Does this include all discharges that are privately owned or not belonging to the MS4?

**2.2.1.a** – This section states that *"Approved TMDLs" for discharges from the permittee's MS4 are those that have been approved by EPA as of the effective date of the this permit.* The draft permit does not consider future revisions during the permit term for waterbodies that are candidates for or are eventually delisted for which a TMDL may no longer be required.

**2.2.1.e** – This section has been recently revised to state "The operators of MS4s...that discharge to a waterbody *segment* listed on Table F-1 in Appendix F...shall meet the requirements of Appendix F, Part II with respect to reduction of bacteria/pathogens discharges from their MS4s" (emphasis given to change in *italics*). This change suggests that if the MS4 does not discharge to the segment of the waterbody, as opposed to the entire waterbody (e.g., beach versus entire lake, or segment of a brook versus the entire river), then the requirements of Appendix F do not apply. Table F-1 specifically lists 4 beaches and a brook in Derry. Two of these beaches are privately owned for which the Town has no jurisdiction, does not own surrounding property, and does not discharge stormwater to. While the town recognizes its responsibilities for MS4 discharge to the associated lake, bacteria or pathogen impairment at the private beach is not within the Town's control.

**2.2.2 Discharge to Certain Water Quality Limited Waters without an approved TMDL** –This section states that if ..."the MS4 is located in a town listed in Part 2.2.a.-b., the permittee shall

section relative to nitrogen impairment of the Exeter River Watershed and the limited area located within Derry. These comments are reiterated here.

- The Exeter River Watershed covers an area approximately 67,700 acres in size. Approximately 500 acres (or 0.8 square miles) of the watershed is in the Town of Derry and is associated with a tributary which flows to the Exeter River whose headwaters are in the Town of Chester.
- The majority of the Derry portion is undeveloped forest, surface water, or bordering wetlands.
- Much of the watershed in Derry also lays outside of the formally designated MS4 area and has, at most, only a couple catchbasins.
- Most of the Town of Chester lies within the Exeter River Watershed, however Chester has received waiver from the MS4 permit.
- The Derry's contribution in the watershed is negligible compared to the area within Chester and the downstream towns.

Installation of structural BMPs and implementation of the requirements outlined in Appendix H would be extremely burdensome and an unnecessary use of limited town resources, given the natural assimilative capacity of the streams within the Derry portion of the watershed, and the magnitude of the downstream segments within the adjacent referenced community not required to implement nitrogen reduction efforts.

**Section 2.3.6.a.ii.(a)** EPA is requiring the Town mandate the use of Low Impact Development (LID) for all new development in order to reduce the discharge of stormwater from new development. This is entirely unnecessary as current state regulations and town ordinances already have requirements relative to reducing discharge of stormwater.

**Section 2.3.6.a.ii.(c),(d),(e)** - There is no definition of LID. It appears that the EPA wants to legislate to the towns how development will be permitted to the point of compromising our minimum standards. The Town of Derry has already evaluated the feasibility of mandating the use of various LID practices in new or redevelopment. Numerous stakeholders were brought to the table including conservation, public works, and public safety. Given the requirements already included in our land development regulations, requirements for road maintenance/plowing, and public safety access for fire trucks, the Town does not believe mandated LID would provide any added benefit.

The requirement of an evaluation of all municipal property for stormwater BMPs is not necessary and difficult to implement. The Town takes property each by Tax Deed with the intent to have these properties back on the market producing taxes. Some of these may be in the urban compact where space is limited for BMPs or some may be vacant parcels. Does the town have to consider these for installation of BMPs where it may not be feasible due to space limitations, or to use up valuable real estate thereby eliminating tax revenue? Do we need to consider BMPs for properties that already have adequate BMPs or stormwater pollution protection practices?

**Appendix F Section I , I.1.b.(ii) and (iii)** - These sections require applicable MS4s to prepare a Salt Reduction Plan that shall include 1) requirements for private parking lot owners and operators and private street owners and operators that drain to the MS4 to use trained and certified salt



applicators in accordance with Env-Wq 2203, and 2) requirements for new development and redevelopment to minimize salt usage and to track and report amounts used.

The Town finds this an unnecessary and burdensome requirement. New Hampshire's successful "Voluntary Certified Salt Applicator Program" has been in effect since November 2013 and has over 300 certified salt applicators listed on the NHDES website. The Town has been a leader in supporting this program, bringing key stakeholders to the table and assisting NHDES in the formulation. Given the success of the voluntary program in Derry, requiring the towns to mandate the use of certified salt applicators by private property parking lot/street owners and operators is unnecessary. It is also unenforceable. No town has the resources to be "salt police". The authors of the draft NH MS4GP should reach out to and discuss the success of the program with NHDES and impacted communities before arbitrarily mandating actions on the part of towns that are virtually impossible to implement and enforce.

If you have any questions, please contact Craig Durrett or me at (603) 432-6144

Very truly yours,

A handwritten signature in black ink, appearing to read "Mike A. Fowler".

Michael A. Fowler, P.E.  
Director of Public Works

Cc/att: Craig Durrett, Derry Public Works

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